IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1157 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL SHAILESHKUMAR KANTIBHAI - Applicant(s)
Versus
MAHESHBHAI N. SHUKLA & 1 - Respondent(s)

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Appearance :

MR PN BAVISHI for Applicant(s) : 1,
None for Respondent(s) : 1,
MR MR MENGDE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 18/07/2007

ORAL JUDGMENT

1. By way of this petition under Articles 226 and 227 of the Constitution of India r.w. Section 482 of the Criminal Procedure Code, the

petitioner – original complainant has prayed for an appropriate order to quash and set aside the impugned order dated 8.12.2006 passed by the learned Sessions Judge, Gandhinagar passed in Criminal Revision Application No. 124 of 2006.

2. It is required to be noted that private complaint has been filed against the petitioner in the Court of learned JMFC, Kalol for the offence under sections 463, 467, 468, 471, 406, 420 and 120(B) of the I.P.C. The trial Court initially passed an order to postpone the issuance of process and directed to hold inquiry under section 202 of the Criminal Procedure Code. After inquiry and investigation, the concerned authority submitted the report before the competent Court and on the basis of the report submitted by the police, the trial Court passed an order to issue summons / process against the petitioner for the aforesaid offences. Being aggrieved and dissatisfied with the same, the petitioner preferred revision application before the learned Sessions Judge,

Gandhingar by way of Criminal Revision Application No. 124 of 2006 and the same also came to be dismissed by the learned Sessions Judge, Gandhinagar by its judgment and order dated 8.12.2006. Being aggrieved and dissatisfied with the same, the petitioner preferred the present petition under Articles 226 and 227 of the Constitution of India r.w. Section 482 of the Code of Criminal procedure.

3. Heard Shri M.R.Vyas, learned advocate appearing for the petitioner. Shri Vyas, learned advocate appearing for the petitioner has submitted that the impugned order passed by the learned trial Court issuing the process against the petitioner for the aforesaid offence is absolutely illegal inasmuch as the learned Magistrate has not given opportunity to file affidavit of Kamlaben Maganbhai and Lilaben Bhikhabhai Patel, who were the nearest relatives of the petitioner. It is also further submitted that in fact, some other persons have signed the documents and even the members and the petitioner has never taken any

loan. It is to be noted that at the stage of issuing summons / process the learned trial Court is required to form his opinion and prima facie case as to whether process is required to be issued or not and at that stage, it is not required to consider the case in detail. At the time of issuing a process the accused is not required to be heard. Considering the report submitted by the Investigating Officer under section 202 of the Criminal Procedure Code and when the trial Court has issued the process against the petitioner, it cannot be said that any illegality has been committed by the learned trial Court. The Revisional Court has rightly dismissed the revision application. The submissions, which have been made on behalf of the petitioner are all defences and they are required to be dealt with at the time of trial. Under the circumstances, there is no substance in the present petition and the same is required to be dismissed and is accordingly dismissed.

(M.R.Shah, J.)

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